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MAR 20 2007

OFFICE OF PETITIONS

In re Application of :
Reneau et al. : DECISION ON PETITION
Application No. 09/944,460 :
Filed: August 31, 2001 :
Attorney Docket No. PU010185 :

This is in response to the communication filed August 16, 2006, which is properly treated as a petition to withdraw the holding of abandonment.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed May 7, 2004. This Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply considered received and no extension obtained, the above-identified application became abandoned on August 8, 2004. The instant petition precedes the mailing of a courtesy Notice of Abandonment.

Petitioner indicates that a response dated August 9, 2004 was timely filed. In support thereof, petitioner submits a copy of their response and their return postcard dated August 11, 2004.

The instant petition was filed more than 2 years after the abandonment of the application. Petitioner is reminded that 37 CFR 1.181(f) provides that, inter alia, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 CFR 1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a

notice of abandonment (the action complained of) may be dismissed as untimely. 37 CFR 1.181(f). The instant petition will not be dismissed as untimely filed; however, any patent issuing from this application may be subject to entry of a period of reduction of patent term adjustment. See MPEP 711.03(c).

With respect to the merits of the petition, it is noted that a postcard receipt, which itemizes and properly identifies the items, which are being filed, serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. Petitioner's postcard evidence has been considered and found to be *prima facie* evidence that the response was, in fact, timely received August 11, 2004. In addition, the response included a certificate of mailing dated August 9, 2004 (but no first hand statement attesting to timely mailing).

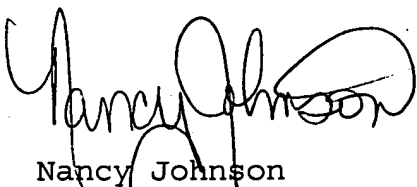
Accordingly, any holding of abandonment is hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Technology Center AU 2622 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw any holding of abandonment and for the examiner to consider the response to non-final Office action resubmitted on petition filed August 16, 2006.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized, looping flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions